

APPEAL NO. 032258
FILED OCTOBER 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 14, 2003. The hearing officer determined that the appellant's (claimant herein) compensable injury does not extend to and include an injury to the cervical spine, thoracic spine, and right shoulder. The claimant appeals, contending that the hearing officer's decision is contrary to the evidence and that the hearing officer erred by not sustaining objections to questions by the respondent (carrier herein) when cross-examining the claimant. The carrier responds that the hearing officer's decision is supported by the evidence and that the hearing officer committed no error in regard to the claimant's evidentiary objections.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was simply conflicting evidence, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's decision was sufficiently supported by the evidence in the record.

Nor do we find merit in the claimant's contention that the hearing officer committed reversible error in his evidentiary rulings. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must show that the admission or exclusion was an abuse of discretion and that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 992078, decided November 5, 1999; see *a/so Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). The carrier has not shown and we do not find any prejudicial error in the hearing officer's overruling the objections to the questioning of the claimant on cross-examination. Generally, broad latitude is permitted on cross-examination and the claimant has failed to explain how the hearing officer's evidentiary rulings probably caused the rendition of an improper decision. Any error would therefore be at most harmless error.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge